



City of Newport
REQUEST FOR CITY COUNCIL ACTION

To: Mayor Xay R. Khamsyvoravong & Members of the City Council
From: Colin K. Kennedy, MPA, City Manager *KMD*
Date: August 20, 2024
Subject: Settlement of Litigation Involving RIDOT
Staff Presentation: Girard Galvin, Esq., Assistant City Solicitor

RECOMMENDATION:

It is recommended that Council approve the attached Resolution that authorizes the Mayor to sign on behalf of the City, pending final City Solicitor review and approval of a final draft, the Settlement Agreement between the City of Newport and the Rhode Island Department of Transportation in the matter of "*City of Newport v. Rhode Island Department of Transportation, by and through Peter Alviti, its Director*" (NM2022-0232).

BACKGROUND AND FINDINGS:

The Rhode Island Department of Transportation took land from the City of Newport for the Newport Pell bridge realignment project in 2021. Based on RIDOT's estimate, the fair market value for the property was \$ 514,315 for the portion of land in dispute. The City had its own appraisal done and the difference between the parties' appraisals was \$230,000. There were issues with determining the actual square footage of the land in dispute. In 2022, the City filed suit against the Rhode Island Department of Transportation to recover the difference in the fair market values based on the City's appraised value.

After further review and negotiations, the parties agreed that an additional payment of \$125,000 from the State would fairly compensate the City for the value of the land in dispute. The total compensation previously paid to the City for the land taken, a temporary easement and asphalt taken was \$514,315. With the payment of \$125,000, the total compensation is increased to \$639,315.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

___ Currently Budgeted (Account _____) ___ Requires additional appropriation ___ No Fiscal Impact

SUPPORTING DOCUMENTS

Resolution
Draft Settlement Agreement

Finance Dept. Review: _____ Date By: _____ (if applicable)

THE CITY OF NEWPORT

**RESOLUTION
OF THE
COUNCIL
No.**

- WHEREAS: in 2021, the State of Rhode Island Department of Transportation ("RIDOT") took certain land interests from the City of Newport for the Newport Pell Bridge realignment project and paid the City the sum of \$514,315 based on RIDOT's estimated fair market value; and
- WHEREAS: thereafter, the City made demand on RIDOT for additional compensation based on its estimate of the fair market value of the interests taken; and
- WHEREAS: in order to recover the difference in fair market values, the City brought suit against RIDOT in the matter of City of Newport v. Rhode Island Department of Transportation, by and through Peter Alviti, its Director (NM2022-0232); and
- WHEREAS: after further review by the parties of their respective appraisals, the parties have negotiated a settlement with the State paying additional compensation in the amount of \$125,000 for the taking and have agreed to enter into a formal Settlement Agreement for the above litigation to memorialize the agreement reached by the parties.

NOW THEREFORE, BE IT

- RESOLVED: the City Council approves the proposed settlement amount of \$125,000 paid by the Rhode Island Department of Transportation as full and final settlement of the litigation aforescribed; and BE IT FURTHER
- RESOLVED: that the Mayor is authorized to sign said Settlement Agreement on behalf of the City, upon further review and approval by the City Solicitor.

IN COUNCIL
READ AND PASSED

LAURA C. SWISTAK
CITY CLERK

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SETTLEMENT AGREEMENT AND SPECIFIC RELEASE OF CLAIM

This Settlement Agreement and Specific Release of Claim ("Agreement") by and between the State of Rhode Island, by and through its Department of Transportation ("RIDOT" or "State"), whose principal place of business is located at Two Capitol Hill, Providence, Rhode Island, and the City of Newport, a municipality in the State of Rhode Island located at 43 Broadway, Newport, RI 02840 (individually, a "Party"; collectively, the "Parties").

RECITALS

WHEREAS, the City of Newport is the owner of property identified as Assessor's Plat 9, Lot 317 and Assessor's Plat 4, Lot 45 of the City of Newport Tax Assessor's Plats, as well as land constituting Columbus Way and a portion of Halsey Street.

WHEREAS, on August 20, 2021, RIDOT filed condemnation State Highway Plat 2975 condemning Parcel Nos. 33A, 33B, 35A, 35B and 39A, of the above-described property. The total acquisition amounted to 56,678 sq.ft. of yard and 61,235 sq.ft. of roadway, three (3) year Temporary Construction Easements ("TCE" or "TCEs") of 29,330 sq.ft. and 9,835 sq.ft. of asphalt pavement area (collectively, the "Condemnation") for RI Contract 2020-CH-065 (the "Project").

WHEREAS, following the Condemnation, RIDOT paid to the City of Newport for the taking of the above parcels of land, for the TCE and for the asphalt pavement taken as part of the Condemnation.

WHEREAS, the City of Newport accepted RIDOT's pro tanto payment, with a full reservation of all rights and without waiver or prejudice to its ability to contest the RIDOT compensation amount in Superior Court in Rhode Island within one (1) year of the date of the filing of the Condemnation.

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WHEREAS, on August 16, 2022, the City of Newport filed a Petition for Assessment of Damages ("Petition").

WHEREAS, RIDOT answered the Petition and disputed the City of Newport's alleged valuation of the damages associated with the Condemnation.

WHEREAS, the City of Newport and RIDOT have agreed that it is in each of their best interests to resolve their disputes prior to incurring costs of litigation; and

NOW THEREFORE, the Parties, in consideration of the promises and covenants contained herein, the receipt and sufficiency of which is acknowledged, and intending to be legally bound hereby, agree as follows:

1. Settlement.

- a. Upon execution of this Agreement, RIDOT will pay to the City of Newport the sum of ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$125,000.00) ("Settlement Sum") within thirty (30) calendar days of the effective date of this Agreement ("Settlement Period").
- b. If RIDOT makes payment of the Settlement Sum in the form of a check ("Settlement Check") within the Settlement Period, and gives written notice to the City of Newport and/or its Attorneys that the Settlement Check is available at RIDOT's Office of Legal Counsel, Two Capitol Hill, Providence RI, then RIDOT shall have complied with the Section 1(a.) payment requirement above with the sole exception being if the Settlement Check is returned for insufficient funds or is otherwise unable to be cashed by the City of Newport.

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- c. On a form to be provided by RIDOT, the City of Newport and/or its Attorneys will execute a receipt for the Settlement Check at the time the Settlement Check is picked up.
- d. Within seven (7) calendar days of the payment of the Settlement Sum, the Parties agree to file a Stipulation of Dismissal with Prejudice as to the Petition in the form attached hereto as Exhibit A.

2. **Specific Release: The City of Newport's Release of the STATE/RIDOT.**

Upon receipt of the payment of the Settlement Sum described above, and in consideration of the promises and other specific covenants and provisions of this Agreement, the sufficiency of which is hereby acknowledged, the City of Newport, for itself and its officers, directors, agents, representatives, consultants, subcontractors, suppliers, servants and employees, and their respective heirs, executors, administrators, successors and assigns, (collectively, the "Releasors"), hereby remises, releases and forever discharges the State of Rhode Island and its Department of Transportation, together with their respective officers, directors, employees, representatives, consultants, agents, and their respective successors, heirs, executors and administrators, (collectively, the "Releasees"), of and from any and all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, rights, liabilities, suits, sums of money, and demands whatsoever, in law or in equity, which the Releasors ever had, now have, or may have against the Releasees upon or for reason of any manner, cause or thing of any nature whatsoever arising out of or relating to the Condemnation and/or the Project, with the sole exception of the following, which are excluded from and which are in no way remised, released, discharged or

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otherwise affected by this release and are expressly not waived and remain in full force and effect: any and all claims or defenses in connection with the enforcement of the terms of this Agreement.

3. **No Admission of Liability.** This Agreement is a compromise of disputed claims relating to the Petition, and any payment, promises, provisions, and other specific covenants made hereunder by any Party are not to be construed as an admission of liability or wrongdoing on the part of any Party, by whom liability and wrongdoing is expressly denied. Nor shall any payment or the existence of this Agreement be used by any Party in any other existing or future litigation, including but not limited to arbitrations, as evidence of liability or of wrongdoing on the part of any Party.

4. **No Inducement.** No promissory inducement which is not herein expressed has been made to any Party, and, in executing this Agreement, the Parties do not rely upon any statement or representation made by any person, firm or corporation hereby released, or any other Party, concerning the nature, extent or duration of any alleged or possible damage or losses, if any, or the legal liability therefor. The Parties hereby acknowledge and assume all risk, chance or hazard that the injuries or damages complained of, if any, may be or become greater or more extensive than is now known, anticipated or expected.

5. **Voluntary Acceptance and Use of Counsel.** In entering into this Agreement, the Parties have relied upon the advice of their attorneys of their own choice. The Parties agree that both Parties have participated equally in the drafting of this Agreement, and neither Party shall be considered the drafter for any purpose. The terms of this Agreement are fully understood and voluntarily accepted by the Parties. The Parties further understand and agree that they are entering into this Agreement knowingly and voluntarily.

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6. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior agreements or understandings between the Parties hereto pertaining to the subject matter hereof. All provisions, including the recitals in this Agreement, are contractual in nature.

7. **Amendments.** This Agreement may only be modified or amended by a duly authorized written agreement signed by both Parties.

8. **Effect of Waivers of Rights.** The failure of any Party to insist upon strict performance of a covenant hereunder or of any obligation hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder, shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation hereunder. No term or provision of the Agreement may be waived unless such waiver is in writing, duly authorized, and signed by the Party against whom such waiver is sought to be enforced.

9. **Effect of Unenforceable Clause.** Any part, provision, representation or warranty of this Agreement, which is prohibited, or which is held to be void or unenforceable, except the enforceability of the payment provisions hereunder, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

10. **Governing Law.** This Agreement shall in all respects be subject to and governed by Rhode Island law, without reference to its choice of law principles.

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11. **Titles and Headings.** Titles and section headings contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of the Agreement. If there is any conflict between any such titles or headings and the text of the Agreement, the text shall control.

12. **Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall be deemed to be one and the same instrument.

13. **Effective Date.** The effective date of this Agreement will be the date of execution by RIDOT.

IN WITNESS WHEREOF, the undersigned, having read the terms of this Agreement carefully, and knowing and understanding its contents, sign same as of their own free act and deed as of the date first written above.

City of The City of Newport

By: Xaykham Khamasyvoravong
Its: Mayor, Duly Authorized
Date: _____

**THE STATE OF RHODE ISLAND,
ACTING BY AND THROUGH ITS
DEPARTMENT OF TRANSPORTATION**

By: Peter Alviti, Jr., P.E.
Its: Director, Duly Authorized
Date: _____